



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/166504

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**PRELIMINARY RECITALS**

Pursuant to a petition filed June 04, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on June 30, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly seeks to recover an overissuance of FS benefits in the amount of \$14,939 from the Petitioner for the period of September 1, 2011 – August 31, 2013.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Jose Silvestre

Milwaukee Enrollment Services  
1220 W Vliet St, Room 106  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. Petitioner's household size was four at all times relevant herein.

2. On July 25, 2011, the Petitioner submitted a FS application. She reported that employment with [REDACTED] ([REDACTED]) ended June 21, 2011 and she would receive her last check on July 8, 2011. No other income was reported for the household.
3. The agency determined the household had unreported earned income from Petitioner's son and employment for the Petitioner at [REDACTED]. The agency requested verification.
4. On August 23, 2011, the Petitioner provided the agency with her final pay statement from [REDACTED] but the case remained in pended status for verification of income from [REDACTED] and earned income for Petitioner's son.
5. On September 12, 2011, the agency received a verification from Petitioner that her employment with [REDACTED] had ended. The agency also received two verifications from Petitioner that her son was earning less than minimum wage at [REDACTED] and [REDACTED]. The verifications were not acceptable and the case remained in pended status.
6. On September 15, 2011, the Petitioner provided a pay statement for her son.
7. On September 16, 2011, the agency issued a Notice of Decision to the Petitioner informing her that her application for FS was approved and she would receive \$621 in benefits for September, 2011 and \$622/month effective October 1, 2011. The notice informed the Petitioner that the FS allotment was based on reported income of \$958.46/month from earned income of Petitioner's son at [REDACTED] and [REDACTED]. The notice also informed the Petitioner of the requirement to report to the agency by the 10<sup>th</sup> day of the next month if her monthly income exceeded \$2,422.
8. In September, 2011, Petitioner returned to work at [REDACTED]. She did not report her return to work to the agency.
9. On February 7, 2012, the Petitioner submitted a Six Month Report Form (SMRF). She reported no change in household composition. She reported no employment/income change for her son with [REDACTED]. She reported her son had not worked for [REDACTED] in a long time. She reported no change with regard to her employment with [REDACTED].
10. On June 21, 2012, the agency issued a renewal summary to the Petitioner informing her that she must review the information and contact the agency by July 2, 2012 if any of the information was incorrect. The summary noted that the Petitioner was employed with [REDACTED] but no income was reported. The summary also reported that the Petitioner's last day at [REDACTED] was June 21, 2011. The summary reported Petitioner's son's job with [REDACTED] at 10 hours/pay period at a rate of \$7.25/hour and his job with [REDACTED] at 22.28 hours/pay period at a rate of \$7.25/hour.
11. In September 11, 2012, the Petitioner completed a renewal. She reported her job with [REDACTED] was a temporary job that started November 24, 2009 and ended June 20, 2012. She reported her final pay check was June 22, 2012. The only household income reported was for her son at [REDACTED] and at [REDACTED].
12. On September 17, 2012, the agency issued a Notice of Decision to the Petitioner informing her that she would receive \$423 for September, 2012 and \$668/month effective October, 2012. It informed her that this was based on reported earned income for her son at [REDACTED] and [REDACTED] of \$345.87/month. She was also informed of the requirement to report to the agency by the 10<sup>th</sup> day of the next month if her household monthly income exceeded \$2,498.
13. On February 4, 2013, the Petitioner submitted a SMRF. She reported her job at [REDACTED] started on November 1, 2009 and ended on June 20, 2012. She reported her son's job at [REDACTED] of 4.28 hours/pay period at a rate of \$8.50/hour and at [REDACTED] for 27.83 hours/pay period at a rate of \$7.25.
14. On February 6, 2013, the agency issued a renewal summary based on the SMRF. The notice indicated that the Petitioner must review the information and contact the agency before February 18, 2013 if any information in the summary was incorrect.

15. On August 21, 2013, the Petitioner submitted a renewal. She reported her employment at [REDACTED] ended on June 20, 2012 and final paycheck was June 20, 2012. She reported her son's employment at [REDACTED] as 13.91 hours/week at \$7.25/hour and his employment at [REDACTED] at 4.28 hours/week at \$8.50/hour.
16. In or about September, 2013, the agency noted a SWICA discrepancy with regard to the Petitioner's wages from [REDACTED]. On September 12, 2013, the agency issued a Notice of Decision to the Petitioner informing her that her FS would be discontinued effective October 1, 2013 due to income exceeding the program limit.
17. On November 21, 2014, the agency issued numerous requests to the Petitioner to verify her employers and income for 2011-2014. The agency received incomplete verification from [REDACTED]. The agency received verification from [REDACTED] that the Petitioner's actual gross wages in August, 2011 were \$3,109.70 and in September, 2011 were \$512.54.
18. On December 14, 2014, the agency issued FS Overpayment Notices and worksheets to the Petitioner informing her that the agency intends to recover the following overissuances:
  - \$7,037 for the period of July 25, 2011 – June 30, 2012
  - \$7,679 for the period of July 1, 2012 – June 30, 2013
  - \$1,336 for the period of July 1, 2013 – August 31, 2013
19. On December 29, 2014, the Petitioner filed an appeal of the overpayment with the Division of Hearings and Appeals. On January 21, 2015, a hearing was held. On April 30, 2015, a Final Decision was issued finding that the agency did not properly establish an overpayment because it had taken a full overpayment without considering evidence of the Petitioner's actual household income. See DHA Case No. FOP/162890. The matter was remanded to the agency to rescind the overpayment. The decision did not prohibit the agency from establishing a new overpayment with a correct basis in law and fact.
20. On May 6, 2015, the agency issued a FS Overpayment Notice and worksheets to the Petitioner informing her that the agency seeks to recover an overissuance of FS benefits in the amount of \$7,295 for the period of September 1, 2011 – August 31, 2012 in the amount of \$7,295.
21. On May 12, 2015, the agency issued two FS Overpayment Notices and worksheets to the Petitioner informing her that the agency seeks to recover an overissuance of FS benefits in the amount of \$3,748 for the period of September 12, 2012 - February 28, 2013 and an overissuance in the amount of \$3,896 for the period of March 1, 2013 – August 31, 2013.
22. On June 4, 2015, the Petitioner filed an appeal with the Division of Hearings and Appeals.

### DISCUSSION

The federal regulation concerning FS overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FS due to an intentional program violation, an inadvertent household error (also known as a "client error"), or an agency error (also known as a "non-client error"). 7 C.F.R. § 273.18(b), see also FoodShare Wisconsin Handbook, Appendix 7.3.2. Generally speaking, whose "fault" caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the agency. See, 7 C.F.R. § 273.18(b); see also FoodShare Wisconsin Handbook, App. 7.3.1.9. However, overpayments due to "agency error" may only be recovered for up to 12 months prior to discovery. FoodShare Wisconsin Handbook, 7.3.2.1. Overpayments due to "client error" may be recovered for up to six years after discovery. *Id.*

In a Fair Hearing concerning the propriety of an overpayment determination, the agency has the burden of proof to establish that the action taken was proper given the facts of the case. The petitioner must then rebut the agency's case and establish facts sufficient to overcome its evidence of correct action.

The evidence in this record demonstrates that the agency initially incorrectly determined the overpayment by merely concluding the petitioner was ineligible for all FS when she did not verify her earnings. As the decision in FOP/162890 notes, the FS regulation that the reported wages may not be used in determining a FS overissuance conflicts with federal law. Federal law requires that an overpayment be calculating by determining the correct amount a household was entitled to receive (using income that the household failed to report) and then subtracting this from the amount the household actually received. See FOP/162890 and 7 CFR 273.18(c)(1)(ii)(A), (B) and (C).

In this case, the agency re-issued the overpayments based on the state wage record for the Petitioner and her son. The monthly average wage for each employer that reported wages for the Petitioner and her son was calculated for each quarter beginning with the third quarter of 2011 and ending with the third quarter of 2013 when the Petitioner's benefits were discontinued. The agency demonstrated that the Petitioner failed to report employment and earned income from [REDACTED] when she submitted her application in July, 2011 and failed to report when she returned to work at [REDACTED] in September, 2011.

The Petitioner testified that she is not a contract worker with [REDACTED] and that when she is laid off in June, she is never certain whether she will receive a return to work letter in August or September. She did not understand that the agency would average her [REDACTED] income over twelve months. The Petitioner also testified that she always completed employment verifications when requested. She conceded she did not provide [REDACTED] pay statements because she stated she does not get paper statements.

The agency's evidence demonstrates that the Petitioner never reported her income from [REDACTED] on any renewals and despite receiving notices from the agency that clearly indicate her [REDACTED] income was not being budgeted in determining her FS eligibility and allotment. Further, the Petitioner never provided any verification of actual wages from [REDACTED] despite numerous requests for such information.

Without evidence of actual wages, the agency correctly averaged the Petitioner's monthly household income based on the state wage records. The only error I note is that [REDACTED] did provide verification of actual wages for the Petitioner for July, August and September, 2011. Though the agency used an average monthly wage for [REDACTED], use of actual wages does not change the result. The agency presented sufficient evidence to demonstrate that the Petitioner failed to properly report household income and failed to report when her income exceeded reporting requirements. I have reviewed the state wage record and the agency's overpayment worksheets and find that they are accurate with the exception of the [REDACTED] wages as noted above. The Petitioner's monthly household income exceeded the program limit for all months from September, 2011 – August, 2013.

Based on the evidence, I find that the agency properly seeks to recover a total overissuance of FS benefits from the Petitioner in the amount of \$14,939 for the period of September 1, 2011 – August 31, 2013.

### **CONCLUSIONS OF LAW**

The agency properly seeks to recover a total overissuance of FS benefits from the Petitioner in the amount of \$14,939 for the period of September 1, 2011 – August 31, 2013.

**THEREFORE, it is**

**ORDERED**

That the Petitioner's appeal is dismissed.

**REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

**APPEAL TO COURT**

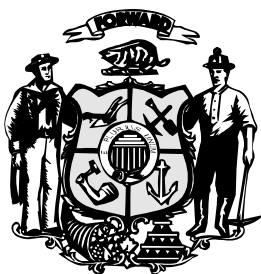
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 30th day of July, 2015

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\sDebra Bursinger  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on July 30, 2015.

Milwaukee Enrollment Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability